



Coast Guard

[Docket No. USCG-2022-0702]

Request for Information on Coast Guard Vessel Response Plan and Maritime Oil-spill Response Plan Advisory Group (MORPAG) Recommendations

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Request for information.

SUMMARY: The U.S. Coast Guard seeks input from the public on the Maritime Oil-spill Response Plan Advisory Group recommendations for changes to the Coast Guard's Vessel Response Plan program and policies. These recommendations were provided in response to an audit from the U.S. Government Accountability Office. This information will support the Coast Guard's mission in marine environmental protection from oil spills.

DATES: Comments must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER PUBLICATION.]

ADDRESSES: You may submit comments using the Federal Decision Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTAL INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Lieutenant Commander Adriana Gaenzle, U.S. Coast Guard; telephone 202-372-1226, email Adriana.J.Gaenzle@uscg.mil.

I. Public Participation and Comments

The Coast Guard views public participation as essential to understanding vessel oil spill response capabilities and improving the Coast Guard's role regarding such review processes. The Coast Guard will consider all information, comments, and material received during the comment period. If you submit a comment, please include the docket number for this request for information, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Methods for submitting comments.

We encourage you to submit comments through the Federal Decision Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG-2022-0702 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using www.regulations.gov, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Public comments will be in our online docket at www.regulations.gov and can be viewed by following that website's instructions, provided on its Frequently Asked Questions page. We review all comments received, but we will only post comments that address the topic of this request for information. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

The Coast Guard will not issue a separate response to the comments received. We will carefully consider all comments and may use them to form recommendations to Congress. The Coast Guard may also introduce

regulatory changes and update policy related to this topic. If the Coast Guard were to undertake any regulatory or policy changes as a result of comments received, that change would be separately announced in the **Federal Register**.

Personal information

We accept anonymous comments. Comments we post to www.regulations.gov will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see the Department of Homeland Security's (DHS) eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

II. Abbreviations

APC	Alternative Planning Criteria
CFR	Code of Federal Regulation
CGHQ	Coast Guard Headquarters
CG-MER	Coast Guard Office of Marine Environmental Response Policy
CG&MT	U.S. House of Representatives Subcommittee on Coast Guard and Maritime Transportation
COTP	Captain of the Port
CST	U.S. Senate Committee on Commerce, Science, and Transportation
DRAT	District Response Advisory Teams
FOSC	Federal On Scene Coordinator
GAO	U.S. Government Accountability Office
MORPAG	Maritime Oil-spill Response Plan Advisory Group
NCC	National Command Center
NPC	National Planning Criteria
NSFCC	National Strike Force Coordination Center
OPA 90	Oil Pollution Act of 1990
OSRO	Oil Spill Removal Organization
PAV	Preparedness Assessment Verification
POAM	Plan of Action and Milestones
QRC	Quick Response Card
RFI	Request for Information
RRI	Response Resource Inventory
SMFF	Salvage and Marine Firefighting
VRP	Vessel Response Plan

III. Purpose

The Coast Guard is issuing this request for information to solicit information that may help improve Vessel Response Plan (VRP) Program administration. The Maritime Oil-spill Response Plan Advisory Group (MORPAG) has completed its analysis of the VRP program and recommended improvements in the following program areas for consideration: Oil Spill Removal Organization (OSRO) Classification, Equivalence, Enforcing National Planning Criteria (NPC) Compliance, Resource Availability, Alternative Planning Criteria (APC) Administrators, Build-Out, Tools, and Staffing.

The Coast Guard will use the public comments received in response to this request for information to better understand vessel oil spill response capabilities, enhance plan review processes, and improve the VRP program overall.

IV. Background

COAST GUARD VRP PROGRAM

The Coast Guard serves as the lead federal agency responsible for preparedness and response to oil discharges and hazardous substance releases in the Coastal Zone. The Coast Guard VRP Program works to ensure that vessels operating in waters of the U.S. comply with all oil spill response, salvage, and marine firefighting regulations, and have plans in place to respond to a potential incident. The requirement to have a VRP applies to tank vessels that carry, or are designed to carry, oil in bulk, and to certain non-tank vessels operating in waters of the U.S.

A variety of entities can be involved in writing VRPs, including vessel owners or operators (known as plan holders) or others they may hire to develop the plan on their behalf. Development of the plans require the use of National Planning Criteria to ensure the availability of response resources for a worst-case discharge event. The VRP includes information about the vessel, (such as its name, country of registry, identification number, call sign, and more), contact information for the vessel's owner or operator, a list of Captain of the Port (COTP) zones that the vessel intends to operate in, the resources identified to respond to a worst-case discharge in each operating area, and the clear identification of the qualified individual – the person(s) or group who is to be notified in the event of a spill in order to activate the plan.

GAO AUDIT, VRP PROGRAM FEEDBACK, AND MORPAG CREATION

The Coast Guard Authorization Act of 2018 included a provision for the U.S. Government Accountability Office (GAO) to review the VRP program. During this audit, from March 2019 to September 2020, the U.S. Coast Guard Office of Marine Environmental Response Policy (CG-MER) received feedback and data from operational units and identified the need to improve the evaluation of VRP submissions and the VRP Program overall.

Consequently, CG-MER commenced the process of forming the MORPAG in April of 2020 and established its charter in August of 2020. The MORPAG led the overall effort along with subject matter experts from relevant program staffs and field units. Its membership consisted of the following COTP Zones: Corpus Christi, Guam, Honolulu, Southeast Alaska, and Western Alaska. Furthermore, this membership included program representatives from Coast Guard Atlantic Area, Pacific Area, District 8, District 9, District 14, District 17, the National Strike Force Coordination Center (NSFCC), and the Office of Maritime and International Law (CG-LMI). The MORPAG is composed entirely of Federal employees and is therefore not subject to the Federal Advisory Committee Act. *See 5 U.S.C. App. 2 § 3(2)(c)(i).*

In September 2020, the GAO issued their final report analyzing the Coast Guard's processes for reviewing, evaluating, and approving VRPs. That audit report, GAO-20-554, can be found online at <https://www.gao.gov/assets/720/710034.pdf>.

In response to the Audit Report and fleet-wide feedback to the VRP Program, the MORPAG adopted key program management practices in carrying out its VRP advisory group efforts associated with analyzing incident data involving VRPs to identify potential improvements to its VRP review processes.

THE MORPAG PROCESS FOR DEVELOPING RECOMMENDATIONS

In April of 2020, the MORPAG established a phased approach and executed a Plan of Action and Milestones (POAM) with the main goal of providing recommendations for updating VRP regulations and aligning national policy in order to improve program consistency, VRP effectiveness, and streamlined submission and review processes. The MORPAG also considered recommending guidance to support the expansion of response capability and successful sustainment of APCs in remote areas. This process included study of regulatory language, evaluation of the OSRO classification program, and development of recommendations to align programs and processes that support VRP development and approval, including accurate and consistent evaluation of APCs. The phased approach of the POAM was divided into four phases from April 2020 to December 2022: (1) Alignment to develop, refine, and approve responsibilities for MORPAG; (2) Analysis of regulations, policy, procedures, and guidelines; (3) Development of possible recommendations; and (4)

Implementation of possible changes in the VRP program and outreach. During this period, contributing factors that impacted MORPAG's efforts included loss of corporate knowledge from personnel turnover, distance, and time zone differences, competing mission demands, budget constraints to conduct in-person meetings, logistical coordination between multiple operational units, and restrictions during the global COVID-19 pandemic.

MORPAG OUTREACH

Planning for oil spills and preparing adequate response strategies that meet NPC in remote areas where response resources are scarce is a very complex process that can be confusing without proper guidance. The MORPAG conducted a series of external engagements and outreach with entities from the maritime community through onsite engagement sessions in Alaska, Guam, and Hawaii to provide full transparency of process and intention. This outreach also included a letter from CG-MER with an enclosed audiovisual presentation that was distributed to tribal nations located in Alaska. These engagements were conducted for the sole purpose of providing a status update of MORPAG's progress.

MORPAG AREAS OF IMPROVEMENT AND RECOMMENDATIONS

(1) **OSRO Classification.** The OSRO classification program was created in response to regulatory requirements from OPA 90. The program is voluntary, and its purpose is to assist the development of response plans for both vessels and facilities. The OSRO classification is limited in scope relative to planning criteria required for VRP compliance and has been subject to differing interpretations from OSROs and vessel owners or operators. The MORPAG recommends the revision of the current *Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program* to clarify the differentiation between the OSRO classification criteria and vessel planning criteria. The MORPAG also recommends the review and evaluation of applicable Vessel Response Plan regulations for possible regulatory change.

(2) **Equivalence.** The Coast Guard reviews an Alternative Planning Criteria (APC) by evaluating equivalence to the NPC. The regulations require an APC to contain alternative procedures, methods, or equipment standards, to provide for an equivalent level of planning, response, or pollution mitigation strategies to the NPC. *Equivalence* as presented in the regulations is subjective in nature because it lacks a defined standard, resulting in a challenge for industry when developing alternatives and for the Coast Guard when evaluating alternative measures. The MORPAG recommends the introduction of an Equivalency Board containing members from the Area Committee that could assist with the delineation of standards for equivalency specific to an operating area(s). This concept would standardize the process of submission and evaluation for acceptance of an APC for inclusion in a VRP.

(3) **Enforcing NPC Compliance.** Current regulations allow a vessel owner or operator to submit an APC request when they believe that complying with applicable NPC is inappropriate for the areas in which the vessel intends to operate. Vessel owners or operators are required to identify available resources to the maximum extent practicable to meet their planning requirements. However, there are not sufficient accountability mechanisms in place to verify if a vessel owner or operator has, in fact, identified all available response resources specific to their vessel. The MORPAG recommends the development of processes that could assist a vessel owner or operator in considering all available resources specific to their vessel during the submission of a VRP. The standardization of this process would reduce unintended delays in the acceptance of an APC for inclusion in a VRP and ensure resources are identified to respond to discharges up to the worst-case discharge volume to the maximum extent practicable.

(4) **Resource Availability.** The planning standard requires the identification and assurance of the availability of response resources through "contract or other approved means." However, it may sometimes be the case that a vessel owner or operator identifies vessels of opportunity (VOO) as a cost-effective possibility to comply with the number of resources required in the VRP. The exact definition of a VOO may vary, but often VOOs are

resources identified on an “as available” status with no commitment to respond. This removes an incentive for industry to develop additional response capability. The MORPAG recommends the review of existing policy and regulations that could be revised or clarified to ensure that agreements between primary providers and the entities (i.e., third parties) controlling other resources guarantee availability to the required planning standard and support VRP adherence to regulatory requirements.

(5) **APC Administrators.** CG-MER Policy Letter 01-17 (October 12, 2017) introduced the concept of an APC Administrator (i.e., a third party) to manage the development and administration of an APC on behalf of the vessel owner or operator. Allowing a third party to manage an APC on behalf of a vessel owner or operator becomes complex when the APC Administrator also acts as a service provider. A potential conflict of interest could prevent the Administrator from identifying all available response resources prior to justifying an APC as required. This situation could remove an APC Administrator’s impartiality when identifying and contracting resources owned or controlled by a different resource provider. The MORPAG recommends clarifying the role of the APC Administrator to ensure objectivity in identifying all available response resources, including those not owned or controlled by the APC Administrator, for a vessel owner and operator’s planning requirements at a given operating area.

(6) **Build-Out.** Introduced by CG-MER Policy Letter 01-17, the term “build-out plan” is defined as descriptions of actions an APC submitter plans to take to increase response capability. However, the Coast Guard is limited in its ability to require build-out to enhance response posture in a region. OSROs have demonstrated a trend of investing in response resources, however, they are challenged with the decision as to where to place additional resources to support their business plan. The MORPAG recommends leveraging Area Committees to provide risk assessments, a list of existing response resource capabilities in the area, and define operating areas based on the results where response resources, including those managed by OSROs, could strategically be placed.

(7) **Tools.** The Coast Guard’s VRP Program manages the review and approval of VRPs that provide response coverage for more than 27,000 vessels operating in the waters of the U.S. Each plan requires application of complex and comprehensive planning criteria and the VRP Program does not have comprehensive guidance and tools that support a consistent, uniform plan submission and review process. The MORPAG recommends the development of planning tools and templates that support APC and VRP submissions and reviews in collaboration with subject matter experts from District Response Advisory Teams (DRAT) and the National Strike Force Coordination Center (NSFCC).

(8) **Staffing.** The 2020 GAO audit of the VRP program (GAO-20-554) identified Coast Guard staffing as a contributing factor limiting the effectiveness of VRP Program. The effective management of APCs and VRPs exceeds current staffing at every level including Coast Guard Sector, District, Area, and Coast Guard Headquarters, as well as support programs such as the NSFCC. The MORPAG recommends an analysis be conducted to evaluate current staffing and program workflow to identify areas where resource proposals could be justified.

FUTURE COAST GUARD ACTIONS

The VRP program must refine and clarify regulation and policy to standardize expectations and processes, establish tools, and leverage additional resources to efficiently manage APC evaluations for approval of a VRP to ensure effective response planning. The MORPAG recommends the Coast Guard charter a new group to determine feasibly and develop a course of action to address all areas of improvement in a POAM with an established realistic timeline.

V. Request for Information

The Coast Guard requests relevant comments and information from the public regarding the VRP program and MORPAG's recommendations. We will use feedback provided to enhance our capabilities in marine environmental protection. We ask that you also keep in mind the Coast Guard's mission to ensure a safe, secure, and resilient marine transportation system that facilitates commerce and protects national security interests. Commenters should feel free to answer as many questions as they would like, but also provide specificity, detail, and the logic behind any finding or numerical estimates. Listed below are questions to guide your responses. We want and encourage your feedback.

(1) Build-out provides the means to ultimately reach NPC in areas where response capability is inadequate for vessels. What are tactics the Coast Guard should consider to promote improvement of response capabilities and make it possible for vessels to meet NPC in remote areas?

(2) What can the Coast Guard do to improve the OSRO classification program to support the planning process that vessel owners and operators must follow to achieve VRP approval?

(3) Should the Coast Guard apply performance standards when evaluating the availability of an identified resource in a VRP?

(4) What can the Coast Guard do to ensure that vessel owners and operators avail themselves of all available resources in an attempt to meet NPC before applying for an APC?

(5) The Coast Guard is tasked with reviewing APCs and accepting them if justified. Should Area Committees have jurisdiction or have responsibilities relative to management of APC?

(6) How can Area Committees provide input to the management of an APC and VRP for the area a vessel intends to operate?

(7) Operating areas where APCs are being used are often remote with scarce resources. These areas represent many challenges to response planning capability. Local knowledge would better facilitate establishing the management of APC. Should the Coast Guard consider establishing APC Managers at COTP zones where APCs are being used?

(8) Although vessels operating in U.S. waters but not coming to or from a U.S. port are not required to have an approved VRP, these vessels on innocent passage or transit passage still present the same environmental risks as vessels that are not on such passage. Should the U.S. Congress consider expanding the requirement for vessels on innocent/transit passage to have an approved VRP, or some other requirement to address this issue?

(9) The Coast Guard enforces the requirement for vessels to operate with an approved VRP, should APC Administrators enforce compliance with their accepted APC operating procedures?

(10) How can APC Administrators enforce accepted APC operating procedures?

Dated: March 27, 2023.

J. F. Burdian,

Rear Admiral, U.S. Coast Guard,

Assistant Commandant for Response Policy.

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